

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

Crl.L.P..No. 329 of 2007()

CC.186/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT,
KODUNGALLUR
.....

PETITIONER/COMPLAINANT:

DEVARAJ, AGED 38,
S/O. KUMARAN, EREZHUTH HOUSE, SRINGAPURAM, METHALA.

BY ADV. SRI.KKM.SHERIF
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS: ACCUSED & STATE:

1. SALIM, S/O. IBRAHIM,
AGED 32, ELINJULLIPARAMBIL HOUSE,
PADIYOOR, MUKUNDAPURAM.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED - R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION
ON 12/06/2007 ALONG WITH CRL.L.P. NO.331 OF 2007, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NOS. 329 & 331 OF 2007

Dated this the 12th day of June, 2007

O R D E R

These two petitions are filed by the complainant in each case for special leave to appeal . Crl. L.P. No. 329 of 2007 is filed against the judgment in C.C. No186 of 2005 on the file of the Judicial First Class Magistrate's Court, Kodungalloor. Crl.L.P. No.331 of 2007 is filed against the judgment in C.C. No.148 of 2005 before the same court. The accused in both the cases is one and the same person.

2. The facts in both the petitions relate to the same transaction and the learned Magistrate found that the appellants - complainants failed to prove beyond reasonable doubt that the cheques in question were issued by the accused - first respondent herein in discharge of a legally enforceable debt as alleged in the complaint. The definite case of the complainants was that they and the accused were engaged in real estate business by investing huge amounts and subsequently when they decided to terminate the joint business, the accused who was managing the business issued the

cheques in question in favour of the complainants which when presented to the bank for encashment were dishonoured for want of sufficient funds in the account of the accused - first respondent. The case set up by the accused was that the cheques were handed over to the complainants due to the pressure exerted by them and that no consideration was passed on .

3. It is the duty of the complainants to prove that a negotiable instrument was issued on the basis of a consideration which existed . The complainants should prove that such a consideration is in existence which led to the issuance of the cheques in question. For a presumption under Section 139 of the Negotiable Instruments Act, 1881, the holder of the cheque should prove that the cheque in question was issued in discharge of a legally enforceable debt. This principle has already been laid down by the Apex Court in the decision reported in **Narayana Menon v. State of Kerala, 2006(3) K.L.T. 404(SC)**. In the above circumstances, this Court is of the view that the impugned judgment requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

